

JPA File No.: 06-066 I  
AG Contract No.: KR06-0938TRN  
Project No.: 169 YV 2.8  
Project: Rumble Strips Repair  
Section: SR 169 Agua Fria River Bridge  
#1371  
**TRACS No.: H6351 01C**  
**Budget Source Item No.: Contractor**

## AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
MARKHAM CONTRACTING CO. INC.

**THIS AGREEMENT** is entered into this date November 6<sup>th</sup>, 2006, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the MARKHAM CONTRACTING CO. INC., acting by and through its PRESIDENT and BOARD OF DIRECTORS (the "Contractor"). The State and the Contractor are collectively referred to as "Parties".

### I. RECITALS

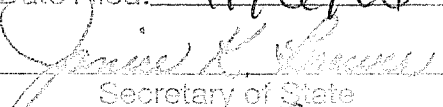
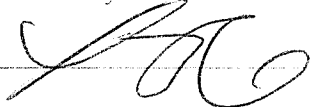
1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The Contractor has resolved to enter into this Agreement and is empowered by its Board of Directors to enter into this Agreement.

3. Incident to the State's project of replacing the Agua Fria River Bridge #1371 on SR 169, the State will perform repairs to mitigate excessive noise and vibration that vehicles experience when driving through the Contractor's widening project as a result of paving over the original rumble strips that were not completely removed. Additional asphalt concrete (AC) repairs will be done to the affected area located at MP 2.8. The Contractor has agreed to pay the State \$17,000.00, hereinafter referred to as the "Project," for the rumble strip removal and AC repairs.

**THEREFORE**, in consideration of the mutual agreements expressed herein, it is agreed as follows:

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NO. 28531  
Filed with the Secretary of State  
Date Filed: 11/16/06  
  
Secretary of State  
By: 

**II. SCOPE OF WORK**

1. The State shall:

a. Upon execution of this Agreement, invoice the Contractor a one-time lump sum of \$17,000.00 for their share of the Project.

2. The Contractor shall:

a. Upon execution of this Agreement and within thirty (30) days after receipt of an invoice, remit to the State a one-time lump sum of \$17,000.00 towards the Project.

**III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion and reimbursements, provided herein.

2. This Agreement shall become effective upon filing with the Secretary of State.

3. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

4. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

5. In the event of any controversy, which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

6. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 616E  
Phoenix, Arizona 85007  
(602) 712-7525  
(602) 712-7424 Fax

Markham Contracting Co. Inc.  
Attn: Mike Markham Jr.,  
Vice President  
22820 N. 19<sup>th</sup> Avenue  
Phoenix, Arizona 85027  
(623) 869-9100  
(623) 869-9400 Fax

7. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**MARKHAM CONTRACTING CO. INC.**

By *Mike Markham Jr.* 10/16/06  
MIKE MARKHAM JR.  
Vice President

**STATE OF ARIZONA**

Department of Transportation

By *Douglas A. Forstie*  
DOUGLAS A. FORSTIE, P.E.  
Deputy State Engineer, Operations

G:\Markham Contracting Co. Inc. rumble strip removal  
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